CAB evidence briefing June 2006

Shaming destitution

NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK

Summary

Since 2003 there has been a 15-fold increase in the number of failed asylum seekers in receipt of so-called section 4 support, on the basis that they are temporarily unable to leave the UK for reasons beyond their control. The Home Office's National Asylum Support Service (NASS) failed to respond adequately to this increase and, during 2005, delay and error in the processing of applications and the delivery of support became commonplace. This resulted in numerous cases of avoidable and shaming destitution.

NASS has now begun to address this administrative failure. However, with up to 250,000 failed asylum seekers awaiting removal from the UK – a great many of whom could meet one or more of the section 4 qualifying criteria – the potential for further administrative chaos remains very real. Furthermore, the section 4 support regime has evolved into one very different to that conceived by Ministers in 2000. Intended as a short-term and discretionary support system for a very small number of 'hard' cases, it is now a large-scale and largely long-term regime with a statutory basis.

This report sets out evidence of the poor service delivery by NASS in 2005, as well as other problems with the cash-less section 4 regime and the associated negative impact on other public services, including the NHS. It argues that the evolution of the regime since 2000 now demands appropriate reform of associated policy and practice. And it recommends how such reform can be incorporated into the Home Office's New Asylum Model – the most radical redesign of its asylum processes in more than two decades.

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Introduction

Before the very forecourt and in the opening of the jaws of hell, Grief and avenging Cares have placed their beds ... and Fear and Hunger that urges to wrongdoing, and Shaming Destitution. Virgil, *Aeneid*

On a cold, damp winter's day in Feburary 2006, Daniel – an elderly Kenyan – took Citizens Advice on a tour of the small, terraced house where he had been living for the past three weeks. On the kitchen floor, a plastic bowl slowly filled with water leaking from a hole in the ceiling. In the bathroom, Daniel showed us the two sources of this deluge: a cracked sink and broken toilet bowl. In his bedroom, where paper peeled from damp, mouldy walls, he pointed out another: the water tank in a cupboard. Around both this cupboard and Daniel's bed – for which he had been given a thin duvet but no sheets or pillowcases – the carpet was sodden. Had Daniel contacted his 'landlord' about these problems? Yes, repeatedly. Had anything been done? No, nothing had been done. Daniel – already weakened by almost four months of homelessness and destitution – was worried about his health.

Daniel is a failed asylum seeker. His unresponsive 'landlord' is a private company – M&Q – contracted by the National Asylum Support Service (NASS) to provide him and other qualifying failed asylum seekers with accommodation and cash-less subsistence support. At the time Citizens Advice visited Daniel, around the country some 5,000 failed asylum seekers were living on NASS section 4 support – so called because it is provided under powers given to the Home Office in section 4 of the Immigration and Asylum Act 1999. Regular NASS support for asylum seekers is provided under section 95 of the Act.

Each year, some two-thirds of all the asylum claims made to the Home Office's Immigration and Nationality Directorate (IND) are finally refused (i.e. including any appeal to the independent Asylum and Immigration Tribunal). Whilst the asylum claim (and any appeal) is under consideration, those applicants (and any dependants) who are unable to support themselves can obtain accommodation and cash subsistence support from NASS. In February 2006, NASS was so supporting some 50,000 asylum seekers and dependants. Where the asylum claim is refused and any appeal dismissed, for single adults and childless couples such NASS support ceases 21 days after the final refusal, and during this 'grace period' they are expected to leave the United Kingdom.[1]

However, some failed asylum seekers are, for reasons beyond their control, unable to leave the United Kingdom before the expiry of this 21-day grace period. Some are in the late stages of pregnancy, or have very recently given birth. Some are unfit to travel for other medical reasons. Many – having lived on low-level NASS subsistence support for months or years – simply do not have the financial means to purchase return travel to their own country, and so must apply for and await *assisted* return.

When establishing the NASS-administered asylum support system in 2000, the Government recognised that, for such reasons, some failed asylum seekers are temporarily unable to leave the UK – or, at least, cannot reasonably be expected to do so. Regulations made under Section 4 of the 1999 Act, as amended by both the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, provide the Home Office with powers to support an

1 In the case of families with children, regular (section 95) NASS support continues until the family departs or is removed from the UK, or until the youngest child reaches the age of 18. However, under section 9 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*, the continuation of such support following a final refusal may be made subject to the family co-operating with the Home Office in making arrangements for the family's voluntary departure or enforced removal from the UK. In 2005, the Home Office conducted a pilot of these 'section 9' provisions, involving 116 families. At the time of writing, this pilot (and the future use of section 9 powers) is under review by Ministers. For further information, see: *Inhumane and ineffective – section 9 in practice*, Refugee Council/Refugee Action, January 2006; and *The end of the road: the impact on families of section 9*, Barnardo's, November 2005.

otherwise destitute failed asylum seeker who satisfies one or more of five conditions.

(i) He or she is taking "all reasonable steps to leave the UK, or to place themselves in a position in which they are able to leave the UK". This includes where the applicant has applied to the International Organisation for Migration (IOM) for assisted return under the Voluntary Assisted Return and Reintegration Programme (VARRP) run by IOM on behalf of the Home Office, and is awaiting such voluntary assisted return.

(ii) He or she is "unable to leave the UK by reason of a physical impediment to travel or for some other medical reason".

(iii) He or she is "unable to leave the UK because in the opinion of the [Home Secretary] there is currently no viable route of return available".

(iv) He or she has applied to the courts for judicial review of a decision in relation to his or her asylum claim, and a court has granted permission to proceed.

(v) The provision of accommodation (and subsistence support) is otherwise necessary to avoid a breach of his or her human rights, within the meaning of the Human Rights Act 1998. This can include where the applicant has made a fresh asylum claim and this is still under consideration by the Home Office IND, and where the applicant has made a late (i.e. out of time) appeal to the Asylum and Immigration Tribunal (AIT) and the AIT is still considering whether to allow the appeal to proceed.[2]

A CAB in the North West of England had helped Daniel to apply to NASS for section 4 support on 20 September 2005, on the basis that he met the last of the above five conditions. Daniel's original (section 95) NASS support had ceased on 7 September, following the final refusal of his asylum claim in mid-August, but on 30 August his solicitor had made a fresh asylum claim and this was still under consideration by the Home Office IND. Given Daniel's age and frailty, and in accordance with a priority system operated by the NASS section 4 team, the CAB adviser clearly marked Daniel's section 4 application as a 'priority A' case, which NASS had previously indicated it aimed to process "within 48 hours" (rather than the usual five working days).

Over the next few weeks, the CAB telephoned the NASS section 4 team at frequent intervals to chase up Daniel's application, but on each occasion was advised that the application was still under consideration. On 10 October, when calling to chase the application, the CAB was told that NASS had "no record" of Daniel's section 4 application. The CAB faxed a copy of the original application. On 30 November, after further chase up calls had produced no result, and with Daniel homeless, destitute and living off weekly Salvation Army food parcels, the CAB submitted a formal complaint to the Home Office IND.[3]

On 6 December, NASS refused Daniel's application for section 4 support, on the grounds that the further representations submitted by his solicitor on 30 August "face a very limited chance of success". On 9 December, the CAB assisted Daniel to make a (paper) appeal against this refusal to the Asylum Support Adjudicators (ASA).[4] And on 20 December, the ASA allowed the appeal, on the basis that the further representations submitted by Daniel's solicitor on 30 August "amount to fresh representations in the appellant's asylum claim and contain evidence in support of the claim", and that "the appellant is entitled to section 4 support whilst the IND caseworkers consider the merits of these representations".

2 The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 SI No 930. To qualify for section 4 support, a failed asylum seeker must also demonstrate that s/he is destitute as defined in section 95 of the 1999 Act (i.e. that s/he does not have either accommodation or sufficient money to meet his/her essential living needs *for the next 14 days*).

3 Apart from an acknowledgement of its receipt and transfer to "the relevant business team", no response to this formal complaint has yet been received.

4 Those appealing to the ASA can opt for a paper-only appeal, or a full appeal with an oral hearing before an ASA adjudicator.

The ASA concluded that the refusal of Daniel's application on 6 December was contrary to NASS's own policy in relation to the granting of section 4 support following the making of a fresh asylum claim (see pp 11-13). Setting out its reasons for allowing Daniel's appeal, the ASA further noted that, in considering his appeal, it had directed NASS to "provide evidence from IND setting out whether the [appellant's] fresh representations have been received and whether they remain under consideration", but that "no response has been received [from NASS]".

On 9 January 2006, nearly four months after making his application for section 4 support, and three weeks after his appeal against NASS's refusal of that application had been allowed by the ASA, Daniel finally moved into the shared house in which Citizens Advice visited him in February. At the same time, he began to receive £35 per week of Luncheon Vouchers as section 4 support.

During 2005, such delay in the determination of applications, and in the granting of section 4 support by NASS following a successful appeal to the ASA, became the norm. In many cases, delay on the part of NASS in deciding to grant section 4 support was then compounded by delay on the part of the relevant NASS-contracted accommodation provider in making accommodation available to the individual, and in starting to provide subsistence support.[5] As a result, vulnerable individuals were subjected to avoidable, and shaming, destitution.

It became a commonplace experience of CAB advisers to be told, upon telephoning the section 4 team that NASS had "no record" of the application or correspondence in question, and it had to be sent again. Throughout 2005, CAB advisers reported their concern about poor and inconsistent decision-making by NASS section 4 caseworkers, and their frustration due to the difficulty of identifying and contacting such caseworkers directly in order to challenge delay, administrative error or a patently incorrect decision (such as that in the case of Daniel).

Almost by definition, applicants for section 4 support are homeless and destitute, and therefore in urgent need of both accommodation and subsistence support. It is presumably for this and other reasons that NASS has an internal target of determining all section 4 applications within five working days. So delays of many weeks and even months in the provision of section 4 support are a very serious matter, putting already vulnerable individuals at great risk. Throughout 2005, CAB advisers reported dealing with pregnant, elderly, seriously ill and otherwise especially vulnerable individuals who were surviving only due to donations and food parcels from the Salvation Army, local church groups and other charities, and/or due to the generosity of NASS-supported and other friends in sharing food, accommodation and other essentials.

The impact of such administrative inefficiency and poor decision-making on the part of NASS is not only felt by such individuals, however. For, as this report seeks to show, there is also an impact on other public services, including the National Health Service and, most especially, the Asylum Support Adjudicators. Moreover, the current section 4 regime fails to 'join up' with and so support the Home Office's wider aims and objectives in relation to the return of failed asylum seekers.

5 In contrast to regular (section 95) NASS support, which supported asylum seekers collect from local Post Offices, section 4 subsistence support is dispensed to a supported failed asylum seeker by his or her NASS-contracted accommodation provider. Citizens Advice has received reports of section 4-supported individuals having to e.g. walk to a local car park to be given vouchers from the boot of a car.

Background: the section 4 regime, 2000-2004

In October 2002, in our report *Distant voices*, Citizens Advice expressed concern about delay in the determination by NASS of applications for section 4 support (then known as 'hard case' support). In October 2003, a report by Stoke CAB, *Mind the gap: failed asylum seekers and hard case support*, criticised the "unnecessarily complex" 'hard case'/section 4 application process, the then lack of any transparent policy framework, and the resultant "arbitrary" decision-making of NASS caseworkers. *Mind the gap* also noted, with concern, the way in which the entire regime was "shrouded in secrecy", leading to most failed asylum seekers simply being unaware of its existence. In 2003, 2004 and 2005, Citizens Advice expressed its continuing concerns about section 4 support at quarterly meetings of the NASS national stakeholder forum (NASF), established in July 2003.

The dramatic escalation, during 2005, of long-standing problems with both the processing of section 4 applications and the delivery of such support must be seen in the context of a substantial increase in the number of section 4 applications since 2003, and especially since December 2004. Originally, the scope of section 4 support was both narrow and vague, with its provision to an ill-defined group of "hard cases" – i.e. "[failed] asylum seekers [who] are unable to provide any support for themselves and would otherwise be exceptionally vulnerable" – being entirely at the discretion of NASS.[6] When the Bill that was to become the 1999 Act was being debated in Parliament, it was envisaged that such 'hard case' support would be delivered by NASS-funded voluntary organisations such as the Refugee Council and Refugee Action, but in the event no such delivery system materialised.

Throughout 2000 and 2001, the number of failed asylum seekers in receipt of such 'hard case' support at any one time remained extremely small. But from late 2001 onwards the number of applications (and grants) rose slowly. This was largely due to the Home Office's announcement that Iraqi Kurd failed asylum seekers would be considered to "have exceptional circumstances for the purposes" of 'hard case' support, due to the lack of a viable route of return to northern Iraq.[7] By late 2003, when NASS was supporting some 80,000 asylum seekers and dependants, there were approximately 300 failed asylum seekers in receipt of 'hard case' support at any one time.[8]

Then, in October 2003, in a judgment echoing the concerns set out in *Mind the gap*, the High Court strongly criticised the then routine failure of NASS to inform failed asylum seekers, when terminating their regular (section 95) support, of the potential availability of 'hard case' support. Concluding that "on principle a policy should be made known to those who may need to avail themselves of it", the High Court declared that the Home Office's decision "not to inform failed asylum seekers of [the] policy on 'hard case' support is unlawful and must be reconsidered".[9]

In coming to this judgment, the High Court noted that the Court:

> "is by no means insensitive to … the difficulties of repatriating those whose asylum claims [prove] unfounded. However, by introducing the hard case scheme the Home Secretary has himself recognised that common humanity requires that even failed asylum seekers, who are prohibited from working and have no other avenue of support, and have good reason not to return to their own countries, must be provided with the essential basics of life."

6 *The new asylum support scheme*, Home Office, March 2000.
7 This approach was reversed in March 2004, when the Home Office announced that "routes of return [to Iraq] are now available".
8 Source: Home Office written evidence in: *Asylum Applications, Second Report of Session 2003-04, Volume II*, House of Commons Home Affairs Committee, January 2004 (HC 218-II).
9 *Salih and Rahmani v Secretary of State for the Home Department* [2003] EWHC 2273.

Following this judicial criticism NASS published its policy framework on 'hard case'/section 4 support (*NASS Policy Bulletin 71*). At the same time, it began to notify all failed asylum seekers, when terminating their regular NASS support, of the availability of 'hard case'/section 4 support, and made a number of welcome modifications to the application process.[10] As a result, the number of applications for (and grants of) such support began to rise steadily. In the fourth quarter of 2004, NASS made 885 grants of such support, compared with just 175 in the second quarter of the year (the earliest period for which published statistics are available).[11] Over 2004 as a whole, NASS received some 3,000 applications for 'hard case'/section 4 support, but the number of failed asylum seekers in receipt of such support at any one time remained below 500.[12]

In a further response to the High Court ruling, section 10 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* effectively ended the discretionary nature of the 'hard case'/section 4 support regime and placed it on a statutory footing. Section 10 of the 2004 Act amended section 4 of the 1999 Act, by enabling the Home Secretary to make Regulations setting out the criteria and conditions for receipt of section 4 support, and by creating a right of appeal to the Asylum Support Adjudicators against a NASS refusal (or termination) of such support. The resultant Regulations came into force on 31 March 2005.[13]

In December 2004, the Home Office conceded a further legal challenge in the High Court, brought by a destitute Iraqi Kurd failed asylum seeker who had applied for and been refused section 4 support.[14] In doing so, the Home Office announced that it would now consider applications for section 4 support from Iraqi nationals on the grounds of there being no safe route of return to Iraq. Word of this new policy spread quickly, and led to some 9,000 such applications during the first few months of 2005.

By October 2005, more than 7,600 failed asylum seekers were in receipt of section 4 support. During 2005 as a whole NASS received 16,436 section 4 applications – over five times more than in 2004. Among these applications were 10,224 by Iraqi nationals (see table 1).

Table 1: Section 4 applications, 2005 – top ten applicant nationalities[15]

Nationality	Number of section 4 applications
All nationalities (total)	16,436
Iraq	10,224
Iran	1,096
Eritrea	846
Congo/DRC	688
Somalia	483
Sudan	332
Ethiopia	327
Zimbabwe	317
Afghanistan	277
Palestine	152
Other nationalities	1,694

In 2004 and 2005, the majority of applications resulted in the granting of section 4 support by NASS (see table 2). In 2005, for example, the 16,436 applications resulted in 10,325 grants of section 4 support – an overall success rate of 63 per cent. In a significant proportion of those cases where the section 4 application was initially refused by NASS, the

10 NASS briefing note to NASF members, 25 May 2004.
11 *Asylum statistics: 4th Quarter 2005*, Home Office, February 2006.
12 Source: NASS briefing note to NASF members, 12 January 2006.
13 The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 SI No 930.
14 *Abdullah v Secretary of State for the Home Department* CO/3709/2004.
15 Source: NASS briefing note to NASF members, 12 January 2006.

individual successfully appealed to the Asylum Support Adjudicators (ASA). In the 12-months following the introduction of a right of appeal against a refusal (or termination) of section 4 support 70 per cent of the 3,900 appeals lodged with the ASA were against such refusal or termination. Forty three per cent of these 2,750 section 4-related appeals were allowed, remitted to NASS for reconsideration, or withdrawn after NASS rescinded the original decision.[16]

Table 2: Grants of section 4 support by NASS, 2004 and 2005[17]

Grants of section 4 support by NASS	
Q1 2004	Figure not available
Q2 2004	175
Q3 2004	365
Q4 2004	885
2004 total	**1,425+**
Q1 2005	6,105
Q2 2005	1,750
Q3 2005	1,510
Q4 2005	960
2005 total	**10,325**
Q1 2006	1,825

"Let them eat cake" – the form of section 4 support

Initially, 'hard case'/section 4 support was provided in the form of full-board, hostel-type accommodation close to Heathrow and other airports. These locations were apparently chosen to "convey the message" to supported individuals that they were "on their way out of the UK". Accordingly, supported individuals received no separate subsistence support. However, as the number of applications for (and grants of) such support rose during 2002, supported individuals were placed in similar, full-board accommodation (mostly provided by the YMCA organisation) in several areas around the UK.

As the numbers rose further, some of the growing number of NASS-contracted section 4 accommodation providers began, with the agreement of NASS, to allocate self-catering accommodation instead, and to provide supported individuals with £35 per week subsistence support. At first, such support was mostly provided in the form of vouchers, but increasingly it came to be provided in cash. By March 2005, fewer than 440 (eight per cent) of the 5,180 failed asylum seekers then in receipt of section 4 support were in full-board accommodation (i.e. including food), with the remainder receiving £35 per week of subsistence support in vouchers or – in most cases – cash.[18]

In early 2005, however, NASS instructed the accommodation providers to cease providing section 4 subsistence support in cash, and instead to provide such subsistence support in the form of vouchers. The decision as to the exact nature of these vouchers was left to the then six separate accommodation providers, with most choosing to provide Luncheon Vouchers, and others choosing to provide supermarket vouchers or swipecards.[19]

In most if not all cases these vouchers are exchangeable for food and drink only, at prescribed retail outlets only, and no change is provided. The difficulties that have flowed from this include: inability to purchase replacement clothing and footware; inability to use public transport and telephones; limited access to culturally appropriate food (e.g. halal meat); and a flourishing 'black market' in vouchers, with criminal profiteers 'buying' vouchers, for as little as 50 per cent of their face value, in return for cash (see pp 20-23).

16 Source: provisional ASA management information, provided to Citizens Advice.
17 Source: *Asylum statistics: 1st Quarter 2006*, Home Office, May 2006.
18 Source: *Hansard*, House of Commons, 20 June 2005, col. 761-2W.
19 As of 1 April 2005, the accommodation providers were (with the number of section 4 supported individuals in brackets): M&Q (3,980); RCA (365); Angel (260); Clearsprings (205); YMCA (180); Caradon (195); and others (5).

In February 2006, a section 4 supported man from Sierra Leone told Citizens Advice how, twice a week, he walked three miles from his accommodation to Sainsbury's to buy food and other essentials – he was having to do the six-mile round trip twice a week because he could not carry a full week's shopping for three miles. He hadn't been able to get his hair cut or buy any new clothing since moving from regular (section 95) NASS support to section 4 support in September 2005, and told how check-out staff in Sainsbury's had prevented him from using his vouchers to purchase pen and paper.

As of June 2006, there are some 5,000 failed asylum seekers of more than 70 different nationalities on section 4 support, despite concerted efforts on the part of the Home Office since mid-2005 to open routes of enforced as well as voluntary return to Iraq and so reduce the number of Iraqi nationals on section 4 support.[20] Most (75 per cent) are accommodated in London or in asylum dispersal areas in just three regions: Yorkshire and Humberside, the West Midlands, and the North West of England. And it is now clear that, as a result of several legal challenges and the move to a statutory footing under section 10 of the 2004 Act, the section 4 support regime has changed out of all recognition from that originally envisaged by Ministers.

Conceived as a discretionary and extremely short-term support system for a very small number of "exceptional" cases, the section 4 regime has gradually evolved into a relatively large-scale, long-term support system with a statutory basis (including a right of appeal to the ASA against a refusal or termination by NASS). Many failed asylum seekers now spend inordinately long periods on section 4 support. At the end of February 2006, the 5,130 principal applicants then in receipt of section 4 support (including 493 with dependant children) had been so supported for an average of almost nine months. Some 3,180 (62 per cent) of these 5,130 individuals had been on section 4 support for longer than six months, and some 1,440 (28 per cent) had been so supported for longer than 12 months.[21]

As most new asylum claims are now finally decided (including any appeal) within six months, many failed asylum seekers are spending a longer period on section 4 support than they did, as an asylum seeker, on regular (section 95) NASS support.[22] And there is good reason to believe that the number of individuals in receipt of section 4 support at any one time will remain significant – certainly well above pre-2004 levels – and could well increase further. As of May 2006, the number of section 4 applications being made to NASS was averaging 200 per week – three times the average weekly number of applications in 2004. Moreover, the number of failed asylum seekers still in the UK who might well meet one or more of the qualifying criteria for section 4 support runs to tens of thousands.

In recent years, a number of reports – most notably those by the National Audit Office and the Home Affairs Committee of MPs – have drawn attention to the "disparity between the numbers of people refused asylum … and the numbers recorded as having left [the UK], whether voluntarily or through removal by the Immigration Service".[23] Most recently, the Public Accounts Committee of MPs has concluded that "the [Home Office IND]'s practice of treating asylum applications, support and enforcement as largely separate,

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20 On 29 July 2005, the Home Office announced that it now considered there to be a safe route of return to Iraq. And, from 1 September 2005, all Iraqi failed asylum seekers who had previously been granted section 4 support on the basis that there was no safe route of return to Iraq were required to show that they were now taking steps to leave the UK (e.g. by registering with the IOM under VARRP), or satisfied one of the other conditions for such support, in order to continue to be eligible for that support. Since August 2005, over 5,000 Iraqi failed asylum seekers have had their section 4 support terminated, and just over 1,000 Iraqis have voluntarily returned to Iraq under VARRP. To date, however, only 15 Iraqi failed asylum seekers have been forcibly removed to Iraq (all on 20 November 2005). For further information, see: *Iraq – return and section 4 support*, Refugee Council, December 2005; and Woodall, L.. 'No asylum support, no safe route to Iraq', in *Legal Action*, January 2006.

21 Source: NASS management information (subject to revision) provided to stakeholders at a meeting on 21 March 2006.

22 Of the asylum claims made in the financial year 2004/05, some 67 per cent had a final decision (including any appeal) within six months. Source: *Asylum statistics: 4th Quarter 2005*, Home Office, February 2006.

23 *Returning failed asylum applicants*, National Audit Office, July 2005; and *Asylum Removals, Fourth Report of Session 2002-03*, House of Commons Home Affairs Committee, April 2003 (HC 654).

uncoordinated operations has proved inefficient", and has "created a growing backlog" of between 150,000 and 280,000 failed asylum seekers.[24]

Such reports have strongly criticised the Home Office's failure to make more use of voluntary assisted returns – which, as the Public Accounts Committee of MPs notes, "are more cost effective and more likely to lead to successful repatriation than enforced removals". In the five-year period 2002-05, during which the Home Office IND refused some 261,500 asylum claims, only 10,813 failed asylum seekers voluntarily left the UK under the VARRP programme.[25]

The experience of CAB clients in 2005

NASS is no stranger to criticism of its administrative performance. Between 2000 and 2004, the organisation was the subject of a constant stream of critical reports by MPs, local authorities and voluntary organisations, including Citizens Advice. In 2002, we published two major reports – *Process error* and *Distant voices* – based on the experiences of CAB advisers and their clients.[26] Both described how many NASS supported asylum seekers were being left for weeks and even months without the means to buy food and other essentials, due to interruptions of their regular (weekly) support payments caused by systemic failures of the overly-complex NASS subsistence support delivery system.

In July 2003, the report of an independent review of NASS, established by Ministers in March that year, concluded that NASS had been "set up on a simplistic view of the scale and nature of the job it was being remitted to do", and "needs urgently to improve its operational performance and standards of customer care, to get better at working with its partners and stakeholders, and much slicker at sorting out basic processing errors".[27] The then Minister's immediate acceptance of all the review's key findings and recommendations, and the associated development of a "major programme of work" to improve the performance of NASS, reflected a sea change in the Government's stated perception of and approach to the NASS system. Citizens Advice is pleased to note that, since 2004, there has been a substantial improvement in the administrative performance and service delivery of NASS as a whole.

However, the key issues that arise from the recent experience of CAB clients and advisers *in relation to section 4 support* bear a striking similarity to those that arose from their dealings with NASS generally in the period pre-2004:

- delay and process error in the determination of section 4 applications by NASS, and in the delivery of such support by the seven separate accommodation/ support providers, have been commonplace, resulting in avoidable destitution
- faced with such delay and process error, advisers have frequently experienced difficulty identifying and making telephone contact with the responsible caseworker in the (centralised) NASS section 4 team
- the NASS section 4 team has frequently failed to take the necessary (and promised) action after such telephone contact
- it has been commonplace for NASS caseworkers to claim to have "no record" of section 4 applications and related correspondence, and/or to have "no record" of advisers' earlier telephone contact(s) with the NASS section 4 team

24 *Returning failed asylum applicants, Thirty-fourth report of Session 2005-06*, House of Commons Committee of Public Accounts, March 2006 (HC 620).
25 Source: *Hansard*, House of Commons, 13 March 2006, col. 1959-60W.
26 *Process error: CAB clients' experience of the National Asylum Support Service*, Citizens Advice (2002); and Distant voices: CAB clients' experience of continuing problems with the National Asylum Support Service, Citizens Advice (2002). See also the written evidence submitted by Citizens Advice to the Home Affairs Committee of MPs in March 2003, reproduced in *Asylum Applications, Second Report of Session 2003-04, Volume II*, House of Commons Home Affairs Committee, January 2004 (HC 218-II).
27 A *review of the operation of NASS*, Home Office, July 2003.

- the coverage and capacity of the local 'one stop shop' asylum support advice services provided by the six NASS-funded reception assistant agencies (such as the Refugee Council and Refugee Action) remain grossly inadequate, both in specific relation to section 4 support and more generally.

At the same time, the evidence from this CAB casework has highlighted a number of key policy concerns:

- the cash-less nature of NASS section 4 support has caused – and continues to cause – serious difficulties for supported individuals;
- there is a lack of clarity about the operational relationship between the NASS section 4 support regime and the VARRP programme
- the limited access of failed asylum seekers, including those on NASS section 4 support, to free NHS medical care, has caused – and continues to cause – hardship and anxiety to supported individuals
- the right of appeal to the ASA against a refusal of section 4 support is hindered by two fundamental shortcomings in the asylum support appeals system: the absence of regional appeal centres, and the lack of 'legal aid' for representation at hearings before the ASA.

As noted above, the great majority of the failed asylum seekers in receipt of section 4 support are housed in just four regions: London, Yorkshire and Humberside, the West Midlands, and the North West of England. Accordingly, most (but by no means all) of the CAB evidence on which this report is based comes from a relatively small number of Citizens Advice Bureaux in these four regions. Between them, these bureaux dealt with many hundreds of section 4-related cases during 2005. The following cases have been selected from this evidence base to illustrate the common themes listed above.[28]

Section 4 support pending the determination of a fresh asylum claim

One of the two most common section 4 casework scenarios reported by Citizens Advice Bureaux is that where the client has applied for section 4 support on the basis of having recently made a fresh asylum claim, his or her original asylum claim having been finally refused.[29]

A CAB in the North West region helped Foday, from Sierra Leone, apply for section 4 support on 1 August 2005, on the basis of a fresh asylum claim having been submitted by his solicitor. On 30 August, not having had any response from NASS, the CAB telephoned the section 4 team, to be told that Foday's application had been refused on 26 August. A copy of the section 4 refusal letter faxed to the CAB gave as the date of refusal of Foday's fresh asylum claim a date prior to its submission. It was apparent to the CAB adviser that the section 4 caseworker had confused Foday's fresh asylum claim with an earlier, unsuccessful application by Foday's solicitor for a judicial review.

The CAB adviser telephoned the section 4 caseworker and explained the situation. The caseworker conceded that there had been confusion, but refused to cancel the section 4 refusal. Foday would have to appeal to the Asylum Support Adjudicators (ASA). The CAB assisted Foday to make a successful appeal to the ASA, and he began to receive section 4 support on 26 September – nearly two months after submitting his application.

Such inflexibility on the part of NASS section 4 caseworkers, and the resultant unnecessary use of the (relatively expensive) ASA appeal system, may help account for the fact that, in the 12 months following the introduction of a right of appeal to the ASA, no less than 70 per cent of all the 3,900 appeals lodged with the ASA were against a refusal (or termination) of section 4 support.

28 All names of individuals have been changed.
29 As of May 2006, some 6,000 fresh asylum claims were under consideration by the Home Office IND. Source: *Hansard*, House of Commons, 8 May 2006, col. 73w.

Probably one of the most important causal factors in the high number of section 4 appeals to the ASA, however, is the seemingly widespread failure of NASS section 4 caseworkers to follow NASS policy in relation to fresh asylum claims. NASS *Policy Bulletin 71: section 4 of the Immigration and Asylum Act 1999* states that, where section 4 support is applied for on the basis of a fresh asylum claim, NASS caseworkers may only refuse support where the further representations "simply rehearse previously considered material or contain no detail whatsoever".

In July 2005, a leading decision by the Chief Asylum Support Adjudicator established in law that, other in these very limited circumstances, NASS caseworkers do not have the power to "make preliminary assessments of [the merits of] purported fresh claims to asylum" and that accordingly section 4 support should be granted "until such time as a decision, albeit a preliminary one, is reached on [the merits of the fresh claim] by an [IND] caseworker" [30] Yet in many of the cases reported to Citizens Advice by Citizens Advice Bureaux (as well as by solicitors and refugee agencies), it is clear that the NASS section 4 caseworker has gone beyond his or her powers as defined by this case law and NASS *Policy Bulletin 71*.

A CAB in the West Midlands region assisted Gertrud, a Zimbabwean single mother with a two-year-old daughter, to apply for section 4 support in August 2005. A fresh asylum claim had been made some weeks previously. On 31 September, when telephoning (not for the first time) to enquire as to progress, the CAB adviser was told that NASS had "no record" of Gertrud's application. The CAB adviser immediately faxed a copy of the original application to NASS.

Over the next few weeks, the CAB frequently telephoned the NASS section 4 team, but was always advised that Gertrud's application was still under consideration. On 29 November, when a CAB adviser telephoned the NASS section 4 team she was told that the application had been refused on 24 November. As neither Gertrud nor the CAB had received notification of this refusal, the CAB adviser asked for the refusal letter to be faxed to the CAB. In the letter, NASS refused Gertrud's section 4 application on the grounds that "it is clear that your [fresh asylum claim] is unlikely to succeed".

On 30 November, the CAB assisted Gertrud to make a (paper) appeal to the Asylum Support Adjudicators, together with a request that the appeal be considered despite being out of time due to the failure of NASS to send the refusal letter to Gertrud or the CAB. On 6 December, the ASA allowed the appeal, on the basis that "having due regard to the Chief Asylum Support Adjudicator's decisions in [the leading cases] ASA05/04/9178 and ASA05/07/9572, I am satisfied that the appellant is entitled to the provision of section 4 support until such time as decision is reached by an IND ICD caseworker on the appellant's [fresh asylum claim]". In its Reasons Statement, the ASA concluded that the NASS refusal letter of 24 November "does not consider either limb of [NASS] *Policy Bulletin 71*".

On 12 December, concerned that Gertrud had still not heard from NASS about when she would be collected by a section 4 accommodation provider, the CAB adviser telephoned the NASS section 4 team, only to be told that NASS had "no record" of the ASA's decision to allow Gertrud's appeal.[31] The CAB adviser immediately faxed the ASA's decision notice and reasons statement to NASS. At the insistence of the CAB adviser, arrangements for Gertrud's collection were made that day, and she finally moved into section 4 accommodation and began to receive voucher support on 23 September –

30 ASA05/07/9572, dated 14 July 2005.

31 The Deputy Chief Asylum Support Adjudicator has publicly confirmed that all ASA decisions are communicated to NASS on the day that they are made, and that, as far as the ASA is concerned, where a s4 appeal is allowed s4 support should begin on the same day (ASA stakeholder meeting, 24 January 2006).

four months after making her application and 17 days after her appeal was allowed by the ASA.[32]

Similarly, a CAB in the Yorkshire and Humberside region reports being approached on 25 August 2005 by Birtukan, a young Ethiopian woman. Birtukan had applied for section 4 support (with the assistance of the Refugee Council) on 19 July, on the basis of having made a fresh asylum claim, but had not yet had a response. As a result, Birtukan was homeless and destitute, and was surviving off food parcels and donations from local charities and church groups. A CAB adviser telephoned the NASS section 4 team, only to be told that NASS had "no record" of Birtukan's application. The adviser then faxed a copy of the original application to NASS.

On 1 September, Birtukan contacted the CAB to say that NASS had refused her application for section 4 support, on the grounds that her fresh asylum claim was "unlikely to succeed". The adviser telephoned the NASS section 4 team to contest this decision, but the caseworker refused to reconsider and advised that Birtukan should appeal to the ASA. The CAB assisted Birtukan to make a (paper) appeal to the ASA, and on 6 September – before the appeal could be determined by the ASA – NASS withdrew its original decision and agreed to grant Birtukan section 4 support. In 2005, ten per cent of all appeals to the ASA were withdrawn after NASS decided to rescind the decision being appealed against.

Legal representation in appeals to the ASA

In each of these cases, as in many others handled by Citizens Advice Bureaux, two key factors in the decision to make a *paper-only* appeal to the ASA – rather than a full appeal with an oral hearing before an ASA adjudicator – were the lack of 'legal aid' for representation at such hearings, and the fact that the ASA has only one hearing centre – in Croydon, south west London.

The lack of 'legal aid' for such representation means that it cannot be obtained from solicitors (other than those willing to act on a *pro bono* basis). And CAB advisers in, for example, the North West of England, who could well provide alternative free representation *locally*, cannot afford the time or financial expense that would be associated with travelling to Croydon to do so. As a result, whilst 49 per cent of ASA appellants receive assistance (from a law centre, CAB or refugee organisation) with completion of the notice of appeal form and preparation of supporting evidence, only one per cent of appellants have the benefit of legal representation at an oral hearing before the ASA.[33] In its annual reports, the ASA has repeatedly voiced its concern at "the lack of representation available to appellants at asylum support appeals".

Yet there is strong evidence that such legal representation at an oral hearing substantially increases the chances of success in an appeal to the ASA. In July 2004, the Asylum Support Appeals Project (ASAP), a small charitable organisation, commenced a voluntary duty scheme at the ASA, for one day per week (now two days per week), providing free representation at oral hearings to otherwise unrepresented appellants. Of the 96 appeals in which the ASAP provided representation between July 2005 and March 2006, a total of 63 per cent were allowed or remitted to NASS (for reconsideration of the refusal/ termination). In comparison, over the same period, across the board only 28 per cent of all appeals made to the ASA were allowed or remitted to NASS.[34]

Such figures confirm what has long been widely accepted, namely that legal representation at an oral hearing before a judicial body significantly increases the

32 Incidentally, whilst the head of the letter from NASS offering Gertrud s4 support, dated 12 December, bore Gerturd's name, elsewhere the letter referred to her by an entirely different name (presumably, that of another s4 applicant), and as "Mr".
33 Source: *Annual Report 2004-05*, Asylum Support Adjudicators. Figures exclude representation by the Asylum Support Appeals Project (ASAP).
34 Source: ASA management information on ASA website.

chances of success, especially where the appellant is disadvantaged in terms of language and cultural differences – as appellants to the ASA undoubtedly are.[35]

Delay in the allocation of section 4 accommodation

In many of the cases reported by Citizens Advice Bureaux, delay on the part of NASS in deciding to grant section 4 support (including after a successful appeal to the ASA) has been compounded by delay on the part of NASS and/or the relevant NASS-contracted accommodation provider in making section 4 accommodation available to the individual, and in starting to provide subsistence (i.e. voucher) support.

A CAB in the Yorkshire and Humberside region helped Kamal – an Iraqi Kurd – apply for section 4 support on 16 June 2005, on the basis that there was no safe route of return to Iraq. On 21 July, having had no response from NASS, a CAB adviser telephoned the NASS section 4 team, only to be told that NASS had "no record" of Kamal's section 4 application. The CAB adviser immediately faxed a copy of the original application to NASS.

On 15 August, the CAB received a decision letter from NASS offering Kamal section 4 support. Kamal attended the CAB on 17 August, and a CAB adviser telephoned NASS on his behalf (Kamal speaks no English) to accept the offer of support and make arrangements for Kamal to be collected by the section 4 accommodation provider. In response, a NASS caseworker indicated that the accommodation provider, Angel, would contact the CAB by 24 August with details of these arrangements.

When Angel failed to contact the CAB by 24 August, a CAB adviser telephoned the NASS section 4 team, only to be told that no accommodation had yet been booked by NASS, that the member of the team responsible for booking accommodation with providers was off sick and was not expected back before 30 August, and that no one else could deal with the matter in their absence as "each of us has our own workload". The CAB adviser indicated that, in this case, she would raise the matter with a NASS manager.[36]

In its report to Citizens Advice, the CAB notes that "Kamal is homeless and destitute and, having already waited two months for a decision, it is simply unacceptable that he should have to wait a further three weeks to be provided with accommodation *after* his application for support has been accepted".

Similarly, a CAB in the South West region reports being approached on 4 April 2005 by Saddam, a young man from Iraq. Saddam's application for section 4 support had been granted on 17 February, but he had still not been collected by the accommodation provider. As a result, Saddam was sleeping in a friend's car and relying on the generosity of friends for food. After several telephone calls to both the NASS section 4 team and the accommodation provider (Angel), it emerged that NASS had somehow failed to provide Saddam's details to Angel.

Just as commonly, however, the fault for the delay in providing the individual with accommodation and subsistence support appears to lie with the relevant accommodation provider, rather than with NASS.

A CAB in the West Midlands region reports assisting Florence, from Botswana, to make an application for section 4 support on 28 January 2005, on the basis of having applied (on 26 January) to IOM for voluntary assisted return to Botswana. On 4 February, the CAB received a decision letter from NASS offering Florence section 4 support. Florence attended the CAB on 8 February, and a CAB

35 See, for example: Genn, H., Lever, B. and Gray, L., *Tribunals for diverse users*, DCA Research Series 01/06, Department for Constitutional Affairs, January 2006.

36 On 24 August, and again on 25 August, the CAB adviser attempted without success to contact a NASS manager to complain about the delay in the allocation of s4 accommodation. On 26 August, the CAB adviser finally managed to speak to a NASS manager, and was informed that Kamal had been collected by the accommodation provider on 25 August.

adviser telephoned the NASS section 4 team on her behalf to accept the offer of support, and to make arrangements for her collection by the accommodation provider (Clearsprings).

On 29 April, Florence returned to the CAB to say that she had never been collected by Clearsprings (as arranged), and so was still not in receipt of section 4 support. She was homeless and destitute, and relying on the generosity of various NASS-supported friends for both food and accommodation. A CAB adviser immediately telephoned NASS and spoke to a section 4 caseworker, who apologised for the delay and said that accommodation would be re-booked for "the beginning of May".

On 4 May, not having heard further from NASS, a CAB adviser tried calling the section 4 team, but lines were constantly engaged. In the afternoon of 5 May a CAB adviser finally spoke to a caseworker, who confirmed that accommodation for Florence was booked with Clearsprings. The adviser then telephoned Clearsprings, and was told that they would call the CAB back "within 24 hours" to arrange for Florence's collection.

On 11 May, not having heard further from Clearsprings, a CAB adviser telephoned, only to be told "it is chaos at the moment and I will have to call you back". On 2 June, having heard nothing from Clearsprings, a CAB adviser telephoned NASS to complain about the continuing delay, and a section 4 caseworker agreed to look into the matter. The following day, a NASS section 4 caseworker telephoned to say that NASS had been paying Clearsprings to accommodate Florence since 13 May. Confirming that Florence was in fact still homeless, destitute and increasingly desperate, the adviser asked the section 4 caseworker to investigate further.

The NASS caseworker called back to say that, whilst Clearsprings claimed to have Florence in their accommodation, the person in question was in fact male (and so clearly not Florence). After further telephone calls, arrangements were made for Florence to be collected by Clearsprings, and she finally moved into section 4 accommodation and began to receive voucher support on 7 June – four months after NASS decided to grant her such support.

Section 4 support whilst awaiting voluntary assisted return

The Voluntary Assisted Return and Reintegration Programme (VARRP) is run by IOM on behalf of the Home Office. Under VARRP, asylum seekers as well as failed asylum seekers who wish to return to their home country may receive assistance with travel documentation and paid return travel. They can also receive up to £1,000 worth of reintegration assistance such as access to vocational training, education or employment opportunities. However, returnees do not receive direct cash payments. The Programme is funded jointly by the EU Commission's European Refugee Fund and the Home Office.[37]

Failed asylum seekers who wish to register under VARRP are the second of the two most common section 4 senarios reported by Citizens Advice Bureaux.

A CAB in the West Midlands region helped Ibrahim, a young Iraqi Kurd, to apply to NASS for section 4 support on 8 November 2005, on the basis of having applied to IOM for voluntary assisted return to Iraq. On 8 December, the CAB received (by fax) a decision letter from NASS offering Ibrahim section 4 support, and he moved into section 4 accommodation later that month. The NASS decision letter further stated that "in the great majority of cases, failed asylum seekers are able to complete all necessary arrangements with the IOM and leave the UK within three months. The matter of whether you continue to satisfy at least one of the eligibility criteria

37 In December 2005 the Home Office announced a Pilot Enhanced Returns Scheme, under which those registering under VARRP between 1 January and 31 May 2006, and departing the UK before 30 June 2006, could receive reintegration assistance up to the value of £3,000, including a £500 cash relocation grant.

for section 4 support will therefore be reviewed three months from now, by 8 March 2006".

On 1 February 2006 the CAB received a further letter, dated 28 January, from NASS. This stated:

> "On 8 December 2005 the [NASS] approved your application for [section 4] support on the basis that you were arranging your departure from the United Kingdom with the assistance of the IOM, but needed accommodation until your travel arrangements had been finalised.
>
> As 21 days has now passed and you are still in receipt of section 4 support, I have reviewed your case to see if you still qualify for it. On the basis of the information that I have it appears that you have now had sufficient time to complete the necessary arrangements for your return to Iraq.
>
> So that I can make a final decision on your case you must provide me [by 12 February 2006] with up to date details of the steps you are taking to return to Iran [sic], which should include any reasons why you have not yet left the United Kingdom."

A CAB adviser immediately spoke to the caseworker who had signed the letter, in order to challenge the contents of the letter of 28 January. The caseworker stated that she had only been doing overtime in the section 4 team, and that she had been following instructions from her manager. She said she would get her manager to call the CAB back. When the CAB did not receive a call back, an adviser faxed a letter challenging the NASS caseworker's letter of 28 January to the NASS section 4 team.

On 15 February, having had no response, the CAB adviser telephoned the NASS section 4 team. The adviser was told that a termination letter had now been sent to Ibrahim as no response had been received by the deadline of 12 February. There was "no record" of the CAB's response, faxed on Ibrahim's behalf on 1 February. Eventually the CAB adviser spoke to a senior caseworker, and re-faxed the CAB's letter of 1 February to the senior caseworker's direct fax number.

On 16 February, the CAB adviser telephoned the senior caseworker again, and was told that the letter of 28 January was "a mistake". The CAB adviser then asked what kind of evidence Ibrahim would need to provide by 8 March, as he had not yet had any contact from IOM and so it seemed likely that he would still be in much the same position. The senior caseworker suggested that IOM would have had time to complete arrangements for Ibrahim's return by 8 March. By implication, if Ibrahim had not returned to Iraq by 8 March it could only be because he was not co-operating with IOM.

The CAB expended considerable time and energy on a letter that it transpires should not have been sent out, and Ibrahim was also caused unnecessary anxiety and inconvenience. Moreover the final statement by the NASS section 4 senior caseworker seems to reveal an unjustified (and quite possibly widespread) assumption on the part of such caseworkers. It has been the common experience of Citizens Advice Bureaux that, in the case of Iraqi nationals, the IOM has taken far longer than three months to make the arrangements for voluntary assisted return under the VARRP programme. Indeed, the Government has stated that

> "IOM send all applications for voluntary [assisted] return to IND within 24 hours of IOM receiving them. IND then approves or rejects applications within five working days. From the date that IND approves an application, the applicants have three months in which to leave the UK – this applies to all nationalities *except Iraqis who have six months in which to leave the UK* [emphasis added].
>
> The returnee informs IOM of when they wish to return, which may be within days

or it may be at the end of the three-month period. This period of time enables the returnee to choose when they wish to travel to take account of their own personal preferences, circumstances [sic] and put their affairs in order."[38]

Accordingly, the practice of NASS to subject the cases of Iraqi failed asylum seekers who have been granted section 4 support on the basis of having registered with IOM to review after just three months appears unjustified.

Access to NHS health care

Unlike asylum seekers awaiting a final decision on their asylum claim, failed asylum seekers – including those in receipt of NASS section 4 support – do not have full access to NHS health care without charge. In terms of primary care, it is Department of Health policy that "failed asylum seekers should not be registered [by GP practices], but equally, GP practices have the discretion to accept [failed asylum seekers] as registered NHS patients". Furthermore, "emergencies or treatment which is immediately necessary should continue to be provided free of charge within primary care, where in the clinical opinion of a health care professional this is required".[39]

This has resulted in some GP practices refusing to see, let alone offer treatment to, failed asylum seekers, including those on NASS section 4 support.

A CAB in the Yorkshire and Humberside region reports being approached in August 2005 by a Syrian failed asylum seeker, on section 4 support and in need of medical treatment. A CAB adviser contacted a local GP practice with a view to making arrangements for the client to register and see a doctor, but was advised that the practice no longer registered failed asylum seekers and that the client should attend the A&E department of the local hospital.

Similarly, a CAB in the North West region reports being approached in January 2006 by a young Iraqi failed asylum seeker, suffering from clinical depression, who had recently been re-dispersed to the area on section 4 support. The client's supply of anti-depressant medication (prescribed by a GP in the region from which he had been re-dispersed) was almost exhausted, and he needed assistance in registering with a local GP with a view to renewing his supply of medication. A CAB adviser contacted a local GP practice, only to be told that the practice no longer registered failed asylum seekers and that the client should attend the A&E department of the local hospital. Clearly, such cases involve unnecessary additional demand on already overstretched A&E departments.

In terms of secondary care, it is Department of Health policy that only "immediately necessary treatment to save life or prevent a condition from becoming life-threatening" should be provided. However, under the NHS (Charges to Overseas Visitors) Regulations 1989, as amended, even such 'immediately necessary treatment' should be charged for, and "recovery [of such charges] should be pursued as far as the trust considers reasonable".[40]

This has resulted in failed asylum seekers, including those on NASS section 4 support, receiving substantial bills for past or future NHS treatment – most commonly, at least in terms of the advice work of Citizens Advice Bureaux, in relation to essential maternity care (including the birth). In some cases, this has led to pregnant women breaking contact with ante-natal care services.

A CAB in the Yorkshire and Humberside region that operates an outreach advice service at local ante-natal classes reports providing advice in the following three cases, all involving pregnant failed asylum seekers:

38 *Hansard*, House of Commons, 13 March 2006, col. 1963w.
39 *Table of entitlement to NHS treatment*, Department of Health website.
40 *Implementing the Overseas Visitors Hospital Charging Regulations – Guidance for NHS Trust Hospitals in England*, Department of Health, April 2004. The Guidance further states: "any course of hospital treatment already underway at the time when the [failed] asylum seeker's claim is finally rejected should remain free of charge until completion. It will be a matter of clinical judgement as to when a particular course of treatment has been completed."

An Eritrean woman sought advice from the CAB in October 2005 after receiving an advance bill from the local NHS Trust for £2,500. The (non-English speaking) client was on NASS section 4 support, and so was receiving just £35 per week subsistence support in vouchers. Her baby was due in December 2005. In its report to Citizens Advice, the CAB notes that "receiving a bill for this amount – which she has no means of paying, even in part – has caused the client a great deal of added stress and anxiety. She was already feeling vulnerable after the refusal of her asylum claim. The client's midwife was concerned for her health and that of the baby with all this stress and anxiety".

A Somali woman sought advice from the CAB in November 2005 after receiving a bill from the local NHS Trust for £2,622 in respect of maternity services already provided. The client, who was on NASS section 4 support and so in receipt of voucher support only, had also received letters threatening court action from a debt collection agency acting on behalf of the Trust. Again, the CAB reports that this had caused the client "much concern and distress".

A woman from the Democratic Republic of Congo sought advice from the CAB in November 2005 after receiving an advance bill for £2,500. Despite being seven months pregnant (and also having a seven year old daughter), the client's application for NASS section 4 support (made by the Refugee Council) had been refused by NASS and the client was homeless and destitute. The CAB reports that the client was "desperately depressed" and that her midwife was "very concerned" for her health and that of the baby. The CAB advised the client that the bill could not be enforced (as she had no money) and would not prevent her accessing maternity services. However, the client stopped attending the ante-natal classes and the CAB lost contact with her.

Under the Department of Health's *Guidance on Implementing the Overseas Visitors Hospital Charging Regulations*, continuing to receive essential maternity care is not conditional on payment of charges made. However, it is our view that that this Guidance, and the resultant issuing of bills to women who simply have no means of paying them, not only causes unnecessary distress to such women (with an attendant risk of miscarriage and of women failing to access essential maternity care), but in so doing brings the Regulations into disrepute. In taking this position, we note that those in receipt of NASS section 4 support are, by definition, otherwise destitute and that, with effect from April 2005 (i.e. subsequent to the publication of the Guidance), they receive no cash with which to pay such NHS charges.

In January 2006, we suggested to the Department of Health that the *NHS (Charges to Overseas Visitors) Regulations 1989* and associated Guidance to NHS Trusts should be amended so that:

(a) all failed asylum seekers (i.e. not just those who are pregnant) who are in receipt of NASS section 4 support retain entitlement to NHS treatment without charge for as long as they are on section 4 support, i.e. the position of those on NASS section 4 support should mirror that of asylum seekers. Those on NASS section 4 support have had to meet strict criteria for the granting of such support, including that they would otherwise be both homeless and destitute, and that they cannot leave the UK for reasons beyond their control. Accordingly, it is only reasonable that such individuals retain the same entitlement to NHS treatment as asylum seekers.

(b) in the case of *pregnant* failed asylum seekers who are not in receipt of NASS section 4 support, charges should not be applied (and bills issued) in respect of ante-natal and maternity services unless there is clear evidence of the individual's

ability to pay. We believe that this approach is required in such cases given the need to protect not only the well-being of the mother, but also that of the unborn child(ren).[41]

A further issue in this context is that it is NASS policy to grant section 4 support only to expectant mothers in "the late stages" of pregnancy" (NASS Policy Bulletin 71). In practice, NASS section 4 caseworkers interpret this as meaning "at least 34 weeks", and this has resulted in pregnant women being refused section 4 support even though it is clear that there is little if any chance of them leaving the UK (voluntarily or otherwise) before the birth.[42]

A CAB in the North West region helped Angela, a pregnant woman from the Democratic Republic of Congo (DRC), apply for section 4 support on 5 September 2005, on the basis that she was unfit to travel. Angela's baby was due in early February 2006, but she had experienced complications and the CAB enclosed medical evidence of these with the section 4 application. During September and October, the CAB – concerned about Angela's deteriorating physical and mental health – repeatedly telephoned NASS to enquire as to progress, but on each occasion was told that the application was still pending.

On 9 November – at which point Angela was 27 weeks pregnant – NASS refused her application, on the grounds that she was not sufficiently pregnant to meet the qualifying criteria. The NASS letter of refusal states:

> "As outlined in [NASS] policy bulletin 71, an applicant has to be in the late stages of pregnancy of 34 weeks to meet the criteria.[43] Therefore you are not currently considered as unable to leave the UK due to your pregnancy and you should start seeking advice on returning home. As a failed asylum seeker you are now expected to take all reasonable steps to leave the UK or place yourself in a position to be able to leave. You can avoid the consequences of destitution by taking these steps."

However, given Angela's poor physical and mental condition – and the fact that airlines will not carry a woman who is more than 28 weeks pregnant without medical evidence that she has an *uncomplicated* pregnancy and is fit to fly – the CAB made further representations to NASS on 24 November, enclosing additional medical evidence of Angela's lack of fitness to fly and risk of deteriorating mental health (provided by her GP). And, on 5 December, NASS reversed its previous decision and indicated that Angela would now receive section 4 support. Angela finally moved into section 4 accommodation, and began to receive voucher support, on 21 December – some 14 weeks after she applied.

During this 14-week waiting period, Angela remained homeless and destitute, surviving on food parcels from a local charity and the generosity of concerned friends, including other NASS-supported individuals. Yet it must have been clear to NASS that there was little if any chance of Angela leaving the UK – voluntarily or otherwise – before the birth of her child, not least because the Home Office was making no arrangements for her removal. Indeed, this is what transpired.

A CAB in the West Midlands region reports dealing with two similar cases, one (in January 2005) involving a five-months pregnant single woman from Somalia, and the other (in June 2005) a five-months pregnant woman from Eritrea. In each case, the client's application for section 4 support (made with the assistance of the Refugee Council) had been refused by NASS. Yet no arrangements were

41 We understand that a proposal on this matter is currently under joint consideration by Ministers in the Home Office and Department of Health.
42 4A senior NASS manager has also stated to Citizens Advice that "if the expectant mother had not managed to obtain relevant documentation and travel before the 36th week [of pregnancy], then she would become eligible for [s4] support under the criterion that she was unable to leave the UK by reason of a physical impediment to travel"; (email from NASS Head of Operations, 30 January 2006).
43 In fact, NASS Policy Bulletin 71 refers only to "the late stages of pregnancy" and does not specify any number of weeks of pregnancy.

being made by the Home Office for the client's voluntary departure or enforced removal, and it was clear that the client would still be in the UK by the time of the child's birth (or, at least, by the time the client was 34 weeks pregnant). And, again, in each case, the client eventually made a successful application for section 4 support later in her pregnancy.[44]

The cash-less nature of section 4 support

As noted in the introduction to this report, by early 2005 the vast majority of the failed asylum seekers in receipt of section 4 support were housed in self-catering accommodation and receiving £35 per week of subsistence support in cash. However, from 11 April 2005, on the orders of NASS, all such cash payments ceased, to be replaced by weekly or fortnightly allowances of various kinds of vouchers (the decision as to the kind of voucher having been left to each of the accommodation providers). And, in most cases, these vouchers may be exchanged, at a limited range of retail outlets, for food and drink only. Inevitably, this has caused – and continues to cause – considerable problems for section 4 supported individuals. These include:

- Inability to purchase clothing and shoes, baby items, pens, paper, books and newspapers, hair cuts and basic medication (such as paracetemol). A CAB in the Yorkshire and Humberside region reports being approached in October 2005 by a Congolese failed asylum seeker on section 4 support, with a young baby, who had been unable to buy nappies, wipes and other sanitary items as the local supermarket had refused to accept her vouchers. The client had then sought assistance from her accommodation provider, RCA, only to be told: "there is nothing we can do about that".

- Inability to use public transport for essential journeys to comply with reporting conditions, to buy food from more distant designated retailers (such as large, out-of-town supermarkets), or to attend medical appointments (including ante-natal care). A CAB in the North West region reports being approached in July 2005 by an Iraqi failed asylum seeker on section 4 support. The client was required to report monthly to the regional Immigration Service reporting centre, but had no money for bus or train fares for the 20-mile return journey. A CAB adviser telephoned the reporting centre, only to be told by an Immigration Officer that the client would "have to walk".

  Another CAB in the same region reports being approached in May 2005 by an Angolan failed asylum seeker who was having to use two buses to get to the offices of her accommodation provider to collect her weekly allowance of vouchers. In order to do so, the client was regularly selling some of her vouchers to profiteers for cash.

- Restricted access to culturally appropriate food (e.g. halal meat), and inability to meet other special dietary needs. A CAB in London reports being approached in October 2005 by a Congolese failed asylum seeker on section 4 support, suffering from chronic renal failure and undergoing peritoneal dialysis four times per day. In addition to this treatment (provided by the NHS), the client was supposed to follow a strict diet and fluid regime, but was having great difficulty keeping to this diet as the only local retail outlet at which she could use her Luncheon Vouchers – a supermarket – did not stock many of the required items. The client had also been unable to purchase additional warm clothing.

  A CAB in the North West region reports being approached in July 2005 by an Iraqi failed asylum seeker on section 4 support who was unable to purchase halal meat, as

44 According to information provided by NASS officials, between August 2005 and April 2006 at least 95 failed asylum seekers were granted section 4 support on the basis of being pregnant.

none of the supermarkets in which his vouchers were accepted sold halal meat.

- Inability to use coin-operated launderettes and public telephones. It is not clear how the Government expects people without cash to telephone NASS, the Home Office IND or the IOM as necessary about their case. This is, of course, one reason for the large number of requests for assistance made to Citizens Advice Bureaux and other advice providers by section 4 supported individuals, who are unable to contact NASS themselves.

In February 2006, the Director of NASS stated that "[accommodation] providers have negotiated for certain shops to take vouchers to ensure dietary [and other] needs are met (for example, the purchase of halal meat)".[45] However, Citizens Advice Bureaux continue to report that they (and their clients) are not aware of these "certain shops" and, despite repeated requests, NASS has so far failed to provide Citizens Advice with a list of the "certain shops" with such arrangements have supposedly been made.

Without cash, section 4-supported individuals are unable to use the cheapest retail outlets, such as street markets. The denial of change in the case of most (if not all) vouchers, with the smallest denomination voucher being 50 pence, further reduces the already low level of section 4 support. At just £35 per person (regardless of age) per week, it is less than two-thirds the basic rate of Income Support (currently £57.45 per week for a person aged 25 and over, and £45.50 per week for a person aged 18-24). It is also markedly lower than the level of regular (section 95) NASS support for asylum seekers (currently £44.22 per week for a person aged 25 and over, and £45.58 for a child under 16).[46] For example, on regular (section 95) NASS support, a single mother with a young child receives £85.80 per week, but on section 4 support she receives just £70.00 per week.[47]

In March 2006, NASS officials sought to justify this difference on the basis that section 4 support is intended to be "short-term".[48] In fact, much of the differential is due to the fact that, unlike regular (section 95) support, which is uprated annually, the level of section 4 support has never been uprated since subsistence support payments were first made in 2002 or 2003. Furthermore, the level of regular (section 95) support is itself set at 90 per cent of basic Income Support levels, partly to reflect the supposedly short-term nature of such support. And yet many failed asylum seekers now live on section 4 support for a longer period than they did on regular (section 95) support as an asylum seeker.

It is evident that many of those on section 4 support have only overcome problems such as those listed above by selling their vouchers for cash. They are sold at less than face value, to exploitative and, inevitably, criminal elements. In Oldham the CAB reports that the local 'going rate' has been 50 per cent of the vouchers' face value. In May 2006, the largest section 4 accommodation provider nationally, M&Q, started to dispense supermarket swipecards, rather than Luncheon Vouchers as previously.[49] A CAB adviser in the West Midlands region has been told by the local office of M&Q that the company is making the switch at the request of NASS, due to "the black market in vouchers".

In short, failed asylum seekers on NASS section 4 support are being denied not only their dignity but a proportion of their subsistence support entitlement, and the Government has provided the criminal fraternity with an extremely profitable

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45 Letter, dated 3 February, to members of the NASF.

46 Unlike both Income Support and regular (s95) NASS support, the level of s4 subsistence support is not subject to an annual uprating; as a result, it has remained unchanged (at £35 per person per week) since at least 2003.

47 In addition, pregnant women/new mothers on s4 support cannot claim the £300 one-off maternity grant, and mothers of young children cannot claim the additional weekly payments (of £3 or £5 per week, depending on the age of the child), that are available to those on regular (s95) NASS support.

48 Meeting between NASS and stakeholders to discuss s4 issues, 21 March 2006.

49 As of 31 December 2005, 2,485 (48 per cent) of the 5,181 individuals then on section 4 support were in M&Q accommodation. The other providers were (with number of persons accommodated in brackets): Angel (670); Capital (250); Caradon (950); Clearsprings (430); RCA (280); Safehaven (30); and YMCA (85).

business opportunity. In the words of Hastings CAB, the provision of section 4 support in vouchers or swipecards is "prescriptive, humiliating, and open to abuse".

All of these problems were among those identified by the Government itself when, in 2001, it decided to abolish the asylum vouchers in which subsistence support was then given to all asylum seekers on regular (section 95) NASS support. Indeed, the Home Office's October 2001 *Report of the Operational Reviews of the Voucher and Dispersal Schemes* specifically refers both to the "lack of flexibility [of vouchers]… which can make it difficult for asylum seekers to budget [and to purchase] certain goods and services – such as public transport [and] launderettes", and to the "vulnerability" of vouchers to "black market activity" and "fraud".

Citizens Advice was surprised as well as disappointed by the replacement of section 4 cash payments with vouchers – a move in relation to which there was no consultation or prior notification. In April and May 2005, senior NASS officials repeatedly asserted to Citizens Advice that the reason for the cessation of cash payments from 11 April 2005 was legal advice, obtained by NASS in July 2004 [sic], that such cash payments were illegal under the *Immigration and Asylum Act 1999*. As this did not accord with our understanding of the law, Citizens Advice and Refugee Action jointly obtained our own formal legal advice. This concluded that there was in fact no legal impediment to the provision of section 4 subsistence support in cash.[50]

In February 2006, the Home Office effectively conceded that the cash-less nature of section 4 support has caused such difficulties in accessing certain goods and services. As the Government tabled a late amendment to Clause 43 of the Immigration, Asylum and Nationality Bill, then in its final stages before Parliament, the Director of NASS stated that "difficulties have been experienced with meeting, under section 4, essential needs [other than accommodation]. We wish to ensure flexibility, both now and in the future, to meet these. They may include travel to medical appointments or to [advice outlets], and essential supplies for new mothers, for example baby clothes".[51]

The Bill received its Royal Assent, and became the Immigration, Asylum and Nationality Act 2006, on 30 March 2006. Section 43 of the Act amends section 4 of the 1999 Act to allow the Home Secretary to make Regulations that "may, in particular, permit a person to be supplied with a voucher which may be exchanged for goods and services [and] may restrict the extent or value of services to be provided, and may confer a discretion". However, the Regulations "may not permit a person to be supplied with money" – thus ruling out any possibility of a return to cash payments. Clearly, the intention is to provide section 4-supported failed asylum seekers with a mix of general and specific vouchers that is more able to meet their individual needs.

Whilst it seems likely that this will represent some improvement on the current situation, Citizens Advice finds it hard to believe that it will prove possible to provide a mix of vouchers that will meet all of the various possible needs of supported individuals (including travel on public transport, use of public telephones, etc). We remain convinced that it would be both more equitable and more cost effective to provide section 4 subsistence support in cash.

The Government has sought to defend the provision of section 4 subsistence support in vouchers rather than cash by arguing that this is necessary "to ensure that it does not act as an incentive to remain [in the UK]".[52]

50 A copy of this formal legal advice was given to the Director of NASS in May 2005, and another was sent to the Immigration Minister, Tony McNulty MP, in June 2005.
51 Letter, dated 3 February 2006, to members of the NASF.
52 Letter from Tony McNulty MP, Home Office minister, in *The Times*, 23 March 2006.

However, this argument is nonsensical. To qualify for section 4 support, failed asylum seekers have to demonstrate that they meet strict criteria relating to their lack of money and accommodation, and to their inability to leave the UK for reasons beyond their control. A grant of section 4 support is not open ended but subject to regular review by NASS (with the review period varying according to the basis on which support is granted). It can be terminated at any stage if NASS decides that the individual no longer qualifies. So, unless NASS is knowingly granting section 4 support to failed asylum seekers who do not meet the strict qualifying criteria, the provision of section 4 in cash rather than vouchers simply would not create any 'incentive to remain in the UK'.

Conclusions and recommendations

Citizens Advice has repeatedly expressed its concerns about the above issues to senior Home Office IND and NASS officials, in correspondence and at face-to-face meetings. This includes at quarterly meetings of the National Asylum Support Forum (NASF), which is chaired by a Senior Director of the Home Office IND, in January 2005, May 2005, and January 2006, and at other meetings with NASS managers in April 2005, March 2006, and April 2006. In October 2005, we sent a small dossier of section 4 case examples illustrating our concerns to the Director of NASS.

Similar concerns have been expressed by other organisations, including the six NASS-funded reception assistant agencies that comprise the Inter-Agency Partnership (IAP), including the Refugee Council, Migrant Helpline and Refugee Action, as well as other members of the NASF, such as the Immigration Law Practitioners' Association and the Medical Foundation for the Care of Victims of Torture. A paper produced jointly by the six IAP agencies in August 2005 sets out the agencies' concerns about: "significant delay" in the determination of section 4 applications; further delay in the allocation of accommodation and support; the "regular" loss of application forms and related correspondence by the section 4 team, requiring applications and correspondence to be re-sent, "sometimes several times"; the provision of sub-standard accommodation; and "extreme difficulties communicating with the section 4 team [by telephone]".[53]

Some of these concerns have been acknowledged by NASS managers, and action has been (or is being) taken to address them. For example, the number of caseworkers in the NASS section 4 team was increased in late 2005, with a view to improving the timeliness of decision-making. In January 2006 NASS managers indicated that all new section 4 applications would be determined within five working days "by the end of February".

However, in late March 2006, NASS managers were able to say only that NASS was "close" to compliance with this processing target. CAB advisers were still being told by NASS caseworkers that applications were taking "four to six weeks" to be processed. In late April, NASS managers conceded that they were still not meeting the five-day processing target, but hoped to be doing so "by the end of May". Given this slippage, it remains unclear whether the NASS section 4 team yet has the resources it needs to routinely meet its five-day processing target.

Additional training has been provided to both new and existing section 4 caseworkers, with a view to improving the quality of decision-making. After Citizens Advice (and others) raised concerns about the frequency with which caseworkers claim to have 'no record' of previously submitted section 4 applications and related correspondence, a NASS manager has stated that she "would agree that in the past this has been an issue. We have though

53 *Section 4 operational and policy issues*, Inter-Agency Partnership, 3 August 2005.

now put steps in place to better manage incoming correspondence".[54]

Such improvement in the administrative performance of the NASS section 4 team, however belated and incomplete, is of course very welcome. However, there are between 150,000-250,000 failed asylum seekers awaiting removal from the UK. A great many of these may meet one or more of the section 4 qualifying criteria, so the potential for further administrative chaos remains very real.[55] Awareness of the availability of section 4 support amongst this pool of failed asylum seekers is increasing, and non-specialist advisers (including CAB advisers) are becoming more skilled at identifying failed asylum seekers who meet one or more of the qualifying criteria.

At the same time, our concerns about the low level and cash-less nature of section 4 support, and the limited access of section 4 supported individuals to free NHS treatment, have yet to be adequately addressed.

In the context of the original, small-scale 'hard case' support regime, such concerns arguably had less significance. But the current section 4 support regime is very different to that 'hard case' regime, as envisaged and planned for by Ministers in 1999. Intended as a short-term and *discretionary* support system for a very small number of "exceptional" cases, the section 4 regime has evolved to become a large-scale and largely long-term support system with a statutory basis. We believe that this transformation in the nature of the section 4 support regime now needs to be fully and openly acknowledged by Ministers. It requires an appropriate transformation of policy and practice in relation to the provision of support to needy failed asylum seekers.

The Home Office has an opportunity to conduct such reform. From May 2006, the Home Office IND will begin national implementation of its New Asylum Model – the most significant (and ambitious) reform of its asylum decision-making processes for more than two decades. Piloted (on a very small scale) since June 2005, the New Asylum Model (NAM) aims to provide a "better managed, more efficient process" that will "ensure genuine refugees have their claims settled quickly and accurately and are then granted leave to remain in the UK, while those whose claims fail are quickly removed". Under the NAM, asylum claimants will be "put through a process tailored to the characteristics of their claim, with a specialist Case Owner responsible for *managing the claimants and their cases right through to integration or removal* [emphasis added].[56] For non-detained claimants, there will be "close contact management" with "access to support dependant upon compliance".[57]

In contrast to the existing process, where an asylum claim is seen by a number of people, the NAM Case Owners will deal with all aspects. This includes interviewing the claimant, make the decision, presenting the IND's case at any appeal to the Asylum and Immigration Tribunal, dealing with support issues and, where necessary, with any barriers to removal. The Case Owner will be the single, "direct point of contact for the [applicant], their legal representative and the courts".

The Government intends that "by end March 2007 all new [asylum claims] will be managed through the new end-to-end process". From May 2006, four newly-established multi-functional NAM teams in Solihull and Leeds will start to process new and some existing asylum claims in the West Midlands and Yorkshire and Humberside regions respectively.

54 Email from Head of NASS Section 4 team, 16 February 2006.

55 Source for number of failed asylum seekers awaiting removal: *Returning failed asylum applicants*, House of Commons Committee of Public Accounts, February 2006 (HC 620). As of May 2004, the Home Office IND database showed 155,000 failed asylum seekers awaiting removal, and the potential maximum number of failed asylum seekers awaiting removal was estimated at 283,500. And, in 2004/05, the number of finally refused asylum applicants again exceeded the number of removals, voluntary assisted returns and voluntary departures of failed asylum seekers.

56 Home Office press release, 18 January 2006. At an initial screening interview, asylum claimants will be assigned to one of seven NAM routes (or 'segments') based on the characteristics of the claim. This 'segmentation' will determine the speed of the process and, e.g., how often the individual is required to report.

57 *New Asylum Model Update, Issue 1*, Home Office IND, May 2006.

This represents a major step up from the small-scale NAM pilots run in Liverpool and Croydon since June 2005. By the end of 2007 a total of 25 NAM teams will be "trained and in place" in six locations: Croydon, Leeds, Liverpool, Solihull, Glasgow and a yet to be announced location in Wales.

Home Office and NASS officials have told Citizens Advice that the role of the NAM Case Owners will include deciding whether to grant (or continue) section 4 support, where such support is applied for by a person whose asylum claim has been finally refused under the NAM processes. However, the Home Office has also stated that NAM Case Owners will be responsible "for the progression and active case management of an asylum claimant" all the way through to "integration, assisted voluntary removal or enforced removal", including in "temporarily irremoveable [i.e. section 4 qualifying] cases".[58] So it will be readily apparent to NAM Case Owners whether a person whose asylum claim has been finally refused meets one or more of the qualifying criteria for section 4 support, in that he or she cannot reasonably be expected to leave the UK for (temporary) reasons beyond his or her control.

Citizens Advice believes – and recommends – that, under the New Asylum Model, it should not be necessary to have to *apply* for section 4 support (although a facility to do so should remain). Rather, it should be the responsibility of the NAM case owners to identify, in advance, those failed asylum seekers who qualify for, and require, section 4 support. In short, for those failed asylum seekers who cannot leave the UK for temporary reasons beyond their control, the transition from NASS section 95 support to NASS section 4 support should be both automatic and seamless.

Furthermore, in terms of support levels, and associated rights and entitlements, we can see no good reason why such section 4 support should differ from section 95 support, which is itself set at a low level to reflect the 'short-term' status of an asylum seeker. In particular, we recommend that:

- the level of section 4 subsistence support should mirror that of section 95 support (which is banded according to age etc). This should include the entitlement of pregnant women and new mothers to a one-off NASS maternity grant (of £300), and that of pregnant women and young children to weekly supplementary payments[59]
- all section 4 subsistence support should be provided in cash
- supported individuals should have full access to free NHS care and treatment
- *all* pregnant failed asylum seekers should be entitled to section 4 support and accommodation, irrespective of the length of pregnancy
- those supported individuals who are also subject to Immigration Service reporting conditions should have full access to the scheme for payment of associated travel expenses[60]
- the notice period following a decision by NASS to terminate section 4 support should be increased from the current 14 days, to 21 days.

In addition, we recommend that:

- publicly-funded legal advice and representation (i.e. 'legal aid') should be available to all those appealing to the Asylum Support Adjudicators against a decision by NASS to refuse or terminate support.

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58 Internal job advertisement for NAM Case Owner positions, posted on the Home Office IND website on 8 February 2006.

59 The current section 95 support levels are: single person aged 18-24: £31.85; single person aged 25 or over: £40.22; lone parent aged 18 or over: £40.22; couple: £63.07; child aged under 16: £45.58; person aged 16-18: £34.60. NASS also makes additional payments of £3 per week to s95-supported pregnant women and to children between one and three years, and of £5 per week to babies aged less than one year.

60 Section 69 of the Nationality, Immigration and Asylum Act 2002 provides the Home Office with powers to pay travel expenses in relation to reporting to a regional Immigration Service reporting centre, and the Home Office established a scheme for the claiming and payment of such expenses in 2005. However, to date the scheme is operative at only eight of the eleven regional reporting centres.

We recognise that such automaticity in the provision of section 4 support would most likely result in an increase in the number of individuals who receive such support, with an associated financial cost to the Home Office. This simply reflects the fact that, under the current, application-based system, many individuals who meet the qualifying criteria do not, for a variety of reasons – including a basic lack of awareness of the existence of the section 4 support regime – apply for such support. As the Home Affairs Committee of MPs has noted, it seems "likely that significant numbers of failed asylum seekers who are unable to return to their countries are not receiving section 4 support". And yet, as the same Committee further noted, "where the removal of a failed asylum seeker is delayed through no fault of his own, it is morally unacceptable for him to be rendered destitute".[61]

As the current process for deciding section 4 applications (and appeals) would be largely obviated, this likely increase in support costs would be partly offset by savings to the IND and the Asylum Support Adjudicators. The automatic identification of failed asylum seekers who require support until they leave the UK would also alleviate a burden that, as MPs have noted, is currently being placed on "charities and voluntary organisations".

More importantly the continuing support of failed asylum seekers who cannot leave the UK, combined with the 'management' of such individuals by NAM case owners, would increase the likelihood of people entering the Voluntary Assisted Return and Reintegration Programme, or otherwise leaving the UK. At an average cost of £1,100, including administrative costs, such voluntary assisted returns are significantly less costly than the £11,000 average cost of an enforced removal.

The National Audit Office has estimated that "for every 1,000 additional voluntary removals [of failed asylum seekers] … an additional £9.9 million of resources could be freed up" for the Home Office to use in other ways.[62]

In 2003, we noted "the lack of any coherent Government strategy in respect of the rapidly growing population of finally refused asylum seekers left homeless and in destitution without any real prospect of removal. Inevitably, some, perhaps many, such individuals are exploited through illegal employment or forced into criminal activity. And, as the Home Office no longer holds an identifiable address for the vast majority, any likelihood of their timely removal (or voluntary assisted repatriation) is simply much reduced."[63]

According to the Home Office, "voluntary returns are inherently preferable to enforced returns" and are "a vital component of [the Government's] returns policy".[64] Voluntary assisted returns "provide a more dignified departure and arrival in the home country". Furthermore, the IOM can "access routes of return" that the Home Office IND cannot.[65] Yet, in 2003-04, voluntary assisted returns accounted for only 16 per cent of the 17,855 recorded departures (both enforced and voluntary) of failed asylum seekers.[66] And, as already noted, in the five-year period 2002-05, during which the Home Office IND refused some 261,500 asylum claims, there were only 10,813 such voluntary assisted returns under the VARRP programme.[67]

The Government – and the taxpayer – has a great deal to gain from the Home Office being able to substantially increase the number of failed asylum seekers leaving the UK under the VARRP programme, or otherwise leaving the UK voluntarily. And a (non-detained) failed

61 Paragraph 205 of *Asylum Applications, Second Report of Session 2003-04*, House of Commons Home Affairs Committee, January 2004 (HC 218-1).
62 Paragraph 3.5 of *Returning Failed Asylum Applicants*, National Audit Office, July 2005.
63 Briefing for Second Reading (House of Commons) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill, December 2003.
64 *Ibid* Note 61, paragraph 223.
65 *The voluntary assisted returns programme: an evalution*, Home Office Research, Development and Statistics Directorate, 2002.
66 *Ibid* Note 62, paragraph 3.2. Voluntary departures accounted for a further seven per cent of these returns, and removals to 'safe third countries' a further 7.5 per cent.
67 Source: *Hansard*, House of Commons, 13 March 2006, col. 1959-60w.

asylum seeker is far more likely to maintain contact with the Home Office, and so engage in the processes that lead to such voluntary assisted return or voluntary departure, if he or she is in receipt of adequate accommodation and subsistence support during the waiting period. To understand that this is so, one simply has to put it the other way around: a (non-detained) failed asylum seeker who is left homeless and destitute has *no* incentive to engage in the voluntary return process or even to maintain contact with the Home Office, and *every* incentive to 'go underground' and work illegally.

As well as automatically providing section 4 support to failed asylum seekers during the period they await voluntary assisted return, however, the Government also needs to enhance the reintegration assistance available from the IOM under the VARRP programme. As already noted above, in early 2006 the Home Office and IOM operated a Pilot Enhanced Returns Scheme. Under this pilot scheme, those registering with VARRP between 1 January and 31 May 2006, and departing the UK before 30 June 2006, could receive reintegration assistance up to the value of £3,000, including a £500 cash relocation grant – i.e. £2,000 more than the usual package. The Home Office IND has indicated that, in the first three months of 2006, this resulted in 45 per cent more VARRP returns than expected (1,376, rather than 950).[68]

None of this is to suggest that failed asylum seekers who are unable to leave the UK, for reasons beyond their control, should remain on section 4 support *indefinitely* (or for any substantial period). We suggest that where it is clear that it is going to be impossible for a failed asylum seeker to leave the UK – voluntarily or otherwise – for some considerable period (in excess of six months), he or she should be granted some form of leave to remain in the UK. The Director of NASS has indicated that "Ministers are open to exploring this conundrum".[69]

Implementation of the above recommendations would result in significant financial gains to the Home Office IND – and so to the taxpayer. It would also ensure that vulnerable and needy failed asylum seekers are no longer subjected to the avoidable, and shaming, destitution seen so often in 2005.

68 Written briefing provided to stakeholders at the Home Office IND Asylum Processes Stakeholder Group, 28 April 2006. As this report went to print, the Home Office announced an extension of the pilot enhanced VARRP scheme for a further six months.

69 Minutes of a meeting between NASS and various stakeholders, 21 March 2006.

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